

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

FRANK “JOE” MENDEZ, an individual, on behalf of
himself and others similarly situated; DONALD MAX
KIMBALL, an individual, on behalf of himself and
others similarly situated; and SIA GOULD, an
individual, on behalf of herself and others similarly
situated,

Plaintiffs,

vs.

STEELSCAPE WASHINGTON, LLC, a Washington
limited liability company; and STEELSCAPE, LLC, a
foreign limited liability company,

Defendants.

NO. 3:19-cv-05691-TSZ

**DECLARATION OF
JONATHAN P. SHAFFER
REGARDING NOTICE AND
SETTLEMENT ADMINISTRATION**

I, JONATHAN P. SHAFFER, declare as follows:

1. I am an Assistant Director of Operations of JND Legal Administration LLC (“JND”).

The following statements are based on my personal knowledge and information provided to me by
other JND employees working under my supervision and, if called on to do so, I could and would
testify competently thereto.

2. JND is serving as the Settlement Administrator¹ in the above-captioned litigation
 (“Action”) for the purposes of administering the Settlement Agreement approved by the Court in the
 Order Granting Preliminary Approval of Class Action Settlement, filed October 12, 2021, ECF No. 36
 (“Preliminary Approval Order”).

¹ Capitalized terms used and not otherwise defined in this Declaration shall have the meanings given such terms in the
 Settlement Agreement, filed September 2, 2021, ECF No. 33 (“Settlement Agreement”).

CLASS MEMBER DATA TRANSFER

3. On October 25, 2021, counsel for the Defendants provided JND an electronic data file containing, among other information, the names and addresses of individuals identified as Settlement Class Members. The file contained a total of 161 possible Settlement Class Members (“Initial Data File”).

4. On November 9, 2021, counsel for the Defendants provided JND a supplemental electronic data file containing, among other information, the 2017 Fiscal Year year-end bonus, 2018 Fiscal Year year-end bonus, and combined year-end bonus for the Settlement Class Members in the Initial Data File (“Supplemental Data File”). Together, the Initial Data File and Supplemental Data File constituted the Settlement Class List (“Class List”).

5. Prior to mailing the Notice of Proposed Class Action Settlement (“Settlement Notice”), JND updated the address information for 6 Settlement Class Members on the Class List using data from the National Change of Address (NCOA) database.² JND then loaded the Class List data into a dedicated database for this Action.

² The NCOA database is the official United States Postal Service (“USPS”) technology product which makes change of address information available to mailers to help reduce undeliverable mail pieces before mail enters the mail stream. This product is an effective tool to update address changes when a person has completed a change of address form with the USPS. The address information is maintained in the database for 48 months.

DISSEMINATION OF NOTICE BY MAIL

6. Per Section 13 of the Preliminary Approval Order, on November 8, 2021, JND mailed the Settlement Notice by USPS first-class regular, postage prepaid, to the Class List. A representative copy of the Notice of Settlement is attached as **Exhibit A**.

7. As of December 28, 2021, 2 Settlement Notices have been returned to JND as undeliverable. JND performed advanced address research for these undeliverables and re-mailed 2 Notices of Settlement to the new addresses. Should JND receive additional undeliverable Settlement Notices before the deadlines provided in the Settlement Notice, it will perform advanced address research and promptly remail any Settlement Notices where an updated address is obtained.

TOLL-FREE TELEPHONE INFORMATION LINE

8. On or before November 8, 2021, JND established a toll-free telephone number for Settlement Class Members to call for additional information regarding the Settlement.

9. As of December 28, 2021, JND has handled 2 calls from Settlement Class Members or other individuals. JND will continue to maintain the toll-free number throughout the Settlement administration process.

FAX INFORMATION LINE

10. On or before November 8, 2021, JND established a fax number for Settlement Class Members to contact for additional information regarding the Settlement. As December 28, 2021, JND has not received any faxes from Settlement Class Members or other individuals. JND will continue to maintain the fax number throughout the Settlement administration process.

SETTLEMENT EMAIL ADDRESS

11. On or before November 8, 2021, JND established a Settlement email address for Settlement Class Members to contact for additional information. As December 28, 2021, JND has not received any emails from Settlement Class Members or other individuals. JND will continue to maintain the Settlement email address throughout the Settlement administration process.

REQUEST FOR EXCLUSION

12. The Settlement Notice informed Settlement Class Members that anyone who wanted to be excluded from the Settlement could do so by submitting a written request for exclusion (“opt-out”) to JND by mail, email, or fax, postmarked or transmitted by December 13, 2021.

13. As of December 28, 2021, JND has not received any Settlement exclusions.

OBJECTIONS

14. The Settlement Notice informed Settlement Class Members that anyone who wanted to object to the Settlement could do so by filing a written statement with the Court and serving a copy on Class Counsel and Steelscape’s counsel by February 4, 2022.

15. As of December 28, 2021, JND has not received and is not aware of any Settlement objections.

SETTLEMENT ADMINISTRATION FEES AND EXPENSES

16. JND has performed its responsibilities as set forth in the Settlement Agreement and Preliminary Approval Order. As of December 28, 2021, JND has incurred \$5,490 in Settlement Administration fees and expenses. JND estimates total Settlement Administration fees and expenses will not exceed \$9,700.

I declare under the penalty of perjury pursuant to the laws of the United States of America that the foregoing is true and correct.


JONATHAN P. SHAFFER

EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

Mendez et al. v. Steelscape Washington, LLC, No. 3:19-cv-05691-TSZ

Notice of Proposed Class Action Settlement

**A Class Action Settlement may affect your rights,
and you may be eligible to receive a payment
from the settlement.**

A court authorized issuance of this Notice. This is not a solicitation from a lawyer.

- Three current or former production employees at the Steelscape facility located in Kalama, Washington, Frank “Joe” Mendez, Sia Gould, and Donald Max Kimball (collectively the “Plaintiffs” or “Class Representatives”) brought a lawsuit against Steelscape, LLC and Steelscape Washington, LLC (together the “Steelscape”) on behalf of themselves and a class of similarly situated production employees. The lawsuit involves claims for alleged unpaid wages, specifically related to fiscal-year-end bonus compensation under Steelscape’s bonus plan(s) applicable to production employees during Fiscal Years 2017 and/or 2018. Plaintiffs claim that they and other production employees earned bonus compensation under those plans that was not paid by Steelscape due to alleged unlawful changes to the terms of the bonus plans.
- The Court has not made any specific legal determinations regarding the merits of the Plaintiffs’ claims and it has not decided whether Steelscape violated the law.
- The parties to the lawsuit have reached a proposed Class Action Settlement. The settlement includes a total payment by Steelscape of up to \$4,000,000.00 (the “Settlement”). The Court has issued an order to preliminarily approve the Settlement and authorizing a Settlement Administrator to issue this Notice.
- You are receiving this Notice because Steelscape’s business records indicate you are eligible to participate in the Settlement as a member of the settlement class. “Class Members” include all current and former employees of Steelscape who were employed in production positions at Steelscape’s facility in Kalama, Washington, between July 1, 2016, and June 30, 2018, and who received a fiscal-year-end bonus for Fiscal Year 2017 or Fiscal Year 2018 under Steelscape’s bonus opportunities applicable to Kalama production employees.
- You will automatically receive a proportional share of the Settlement payment unless you exclude yourself (or “opt out”) from the Settlement, as explained below.
- Your legal rights are affected whether you act or do not act. Please read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	<p>Stay in the Class. Receive Settlement payment. Give up certain rights.</p> <p>By doing nothing, you will receive a proportional share of the Settlement proceeds if the Settlement is approved by the Court and becomes final. In exchange, you will be bound by all terms of the Settlement, including the Release of Claims. You are not required to appear at any Court hearing; you will be represented by Class Counsel and the Class Representatives.</p>
ASK TO BE EXCLUDED	<p>Exclude yourself from the Class. Receive no Settlement payment. No waiver of rights.</p> <p>If you ask to be excluded (or “opt out”) from the Class, you will not be bound by the Settlement (including the Release of Claims), but you will not receive any share of the Settlement proceeds. The deadline by which you must opt-out of the Settlement is December 13, 2021.</p>
OBJECT OR COMMENT	<p>Stay in the Class, but Challenge the Settlement terms.</p> <p>You may object to the Settlement and tell the Court why you do not want the Settlement to be approved. If the Court approves the Settlement despite your objection, you will still be bound by the Settlement. If you request to be excluded from the Settlement, you cannot also object to it. You may also comment on any term of the Settlement. The deadline to object to or comment on the Settlement in writing is February 4, 2022. If you do not object or comment in writing, you may still attend the final approval hearing to make an oral objection or comment.</p>

- **Any questions? Read the rest of this Notice.**

BASIC INFORMATION

1. Why did I get this Notice?

The Class Representatives brought a lawsuit for unpaid bonus income against Steelscape. The parties to the case have now reached a proposed Settlement. The Court issued an order preliminarily approving the Settlement. That order also directed that this Notice be sent to all Class Members to inform you about the proposed Settlement and about your options and rights, before the Court decides whether to finally approve the Settlement. The Court will decide whether to approve the Settlement during a Final Approval Hearing scheduled to occur on **February 22, 2022 at 10:00 a.m.** in the United States District Court for the Western District of Washington at Seattle, 700 Stewart Street, Seattle, Washington 98101. The date and time of the Final Approval Hearing is subject to change without further notice. If the Court approves the Settlement, and after any appeals are resolved, payments will be made to Class Members.

2. Who are the Parties and What is the Lawsuit About?

Plaintiffs Frank “Joe” Mendez, Sia Gould and Donald Max Kimball brought this lawsuit. Defendants are identified as Steelscape Washington, LLC, a Washington limited liability company, and Steelscape, LLC, a foreign limited liability, who own and operate the Steelscape business location in Kalama, Washington. Plaintiffs and Steelscape are referred to as the “Parties” to the lawsuit.

The Court appointed Plaintiffs to serve as the “Class Representatives” for the Class. The Court also appointed their lawyers to serve as “Class Counsel” for the Class and appointed JND Legal Administration to serve as “Settlement Administrator” for the Settlement.

Plaintiffs allege that Steelscape failed to pay them and other Steelscape production workers the total amount of fiscal-year-end bonus income they were promised or that is owed under Washington law for Fiscal Year 2017 (July 1, 2016 through June 30, 2017) and Fiscal Year 2018 (July 1, 2017 through June 30, 2018). They alleged that Steelscape made promises regarding these fiscal-year-end bonuses upon which they reasonably relied, and/or that Steelscape unlawfully altered the bonus terms in a manner that deprived production employees of earned bonus payments. Steelscape filed defenses and denies any and all wrongdoing. The Court has not made any specific legal determinations regarding the merits of the Plaintiffs’ claims, and it has not decided whether Steelscape violated the law.

3. Why is there a Settlement?

The Court has not ruled on any of the claims in this case and has not decided whether Plaintiffs or Steelscape are right. Instead, the Parties agreed to this Settlement after extended, good faith and arms-length negotiations with the assistance of a neutral third-party mediator. The Settlement allows the Parties to put the matter to rest, focus on other business and personal matters, and avoid the costs and risks of litigation and trial in exchange for certainty in the outcome and compensation to Class Members. Plaintiffs and Class Counsel believe the Settlement is best for everyone in the Class.

4. How do I know whether I am part of the Settlement?

You received this Notice because Steelscape’s records show that you are a Class Member under the terms of the proposed Settlement. If the Settlement is approved, it will cover all Class Members who do not exclude themselves from the Settlement (called “Participating Class Members”), as explained below.

5. What are the Settlement terms and how much can I expect to receive if I participate?
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a. Overall summary of Settlement terms

Steelscape will pay up to \$4,000,000.00 to settle this case (the “Settlement Amount”). From that amount, payments will be made to Class Counsel for attorneys’ fees (up to 25% of the Settlement Amount) and costs actually incurred in litigating this case (up to \$10,000.00), to the Settlement Administrator for administration costs (up to \$20,000.00), and service awards for Class Representatives Sia Gould and Donald Max Kimball to compensate each of them for their time in pursuing this lawsuit (\$5,000.00 each). The final amounts of these payments are subject to Court approval. If the Court approves these payments, the remainder of the Settlement Amount (“Net Settlement Fund”) will be distributed to the Participating Class Members, less employer and employee payroll taxes and withholdings required by law. The Settlement Amount will be reduced pursuant to a formula to account for Class Members who opt out of the Settlement. Steelscape has the option to nullify the Settlement if more than five percent (5%) of the Class Members (*i.e.*, nine (9) or more Class Members) choose to opt out.

b. Calculation of individual Class Member payments

The Net Settlement Fund will be proportionally distributed to all Participating Class Members based on a calculation of the aggregate gross annual bonus amount received by each Participating Class Member under the applicable bonus opportunities for Fiscal Years 2017 and 2018, divided by the aggregate gross annual bonus amount that Steelscape distributed to the Participating Class Members collectively under those same bonus opportunities (\$3,079,138.15 if there are no opt-outs). Illustrative examples follow describing the expected average, highest, and lowest gross settlement payment amounts under four possible scenarios (before tax withholding as discussed in Section 5.c).

Example 1: No Opt-Outs

If no Class Members opt-out, there will be 162 Participating Class Members. If the Court approves \$1,000,000.00 in attorney fees, \$10,000.00 in litigation costs, \$20,000 in settlement administration costs, and \$10,000 in service awards, then the Net Settlement Fund will be \$2,960,000.00.

The average gross settlement payment will be \$18,271.60. The highest gross settlement payment will be \$34,111.44, payable to an individual who held a production position throughout Fiscal Years 2017 and 2018, received the highest aggregate eligible earnings during the relevant fiscal years, and therefore received the highest aggregate annual bonus payments for those fiscal years. The lowest gross settlement payment will be \$328.74, payable to an individual hired near the end of Fiscal Year 2018, who received the lowest aggregate eligible earnings during the relevant fiscal years, and therefore received the lowest aggregate bonus payments for those fiscal years.

Example 2: Three Opt-Outs Who Received Below-Average Bonuses

If any Class Members opt-out, then an opt-out adjustment will be applied to the Settlement Amount to account for their non-participation. If three individuals opt-out and, for example, they received \$50,002.79 in aggregate gross annual bonuses for Fiscal Years 2017 and 2018, then the Settlement Amount will adjust to \$3,935,040.00. If the Court approves \$983,760.00 in attorney fees, \$10,000.00 in litigation costs, \$20,000.00 in settlement administration costs, and \$10,000.00 in service awards, then the Net Settlement Fund will be \$2,911,289.00.

There will be 159 Participating Class Members. The average gross settlement payment will be \$18,309.99. The highest gross settlement payment will be \$34,103.90. The lowest gross settlement payment will be \$328.67.

Example 3: Five Opt Outs Who Received Very Low Bonuses

If five Class Members opt-out and, for example, those individuals received only \$3,706.88 in aggregate gross annual bonuses for Fiscal Years 2017 and 2018 (because they were all hired late in Fiscal Year 2018), then the Settlement Amount will adjust to \$3,995,200.00. If the Court approves a total of \$998,800.00 in attorney fees, \$10,000.00 in litigation costs, \$20,000 in settlement administration costs, and \$10,000 in service awards, then the Net Settlement Fund will be \$2,956,400.00.

There will be 157 Participating Class Members. The average gross settlement payment will be \$18,830.57. The highest gross settlement payment will be \$34,111.01. The lowest gross settlement payment will be \$328.73.

Example 4: Eight Opt-Outs Who Received Above-Average Bonuses

If eight Class Members opt-out and, for example, those individuals received \$180,619.67 in aggregate gross annual bonuses for Fiscal Years 2017 and 2018, then the Settlement Amount will adjust to \$3,765,360.00. If the Court approves a total of \$941,340.00 in attorney fees, \$10,000.00 in litigation costs, \$20,000 in settlement administration costs, and \$10,000 in service awards, then the Net Settlement Fund will be \$2,784,020.00.

There will be 154 Participating Class Members. The average gross settlement payment will be \$18,078.05. The highest gross settlement payment will be \$34,082.68. The lowest gross settlement payment will be \$328.46.

Because these fiscal-year-end bonuses were calculated as a percentage of each employee's eligible earnings, the amount payable to each Participating Class Member is largely dependent on the individual's gross earnings as a production employee for Fiscal Year 2017 and 2018. Your specific payout may be smaller or larger than the average payout for a variety of reasons, including because some Class Members worked in production positions for a limited time during the relevant period, Class Members had differing rates of pay, and Class Members worked differing amounts of overtime.

If you do not exclude yourself from the Settlement, a check for your Settlement share will be mailed to you within approximately thirty (30) days after the Settlement's "Effective Date," which is the later of: (1) thirty (30) days after the Court grants final approval of the Settlement or denies any motion for reconsideration if there are no appeals from the Court's final approval order; or (2) if an appeal is timely filed or other appellate review is sought, the date the final judgment is finally affirmed and all other means of appellate review have been exhausted or have expired.

c. Applicable tax withholding and responsibility for taxes

According to the Settlement, payments to Class Members will be allocated for tax purposes as follows: (1) 40% will be deemed wages, from which taxes will be deducted (including the employer's share of required payroll taxes), (2) 40% will be deemed as exemplary damages with no taxes deducted, and (3) 20% will be deemed interest with no taxes deducted.

The taxes deducted as a portion of your wages does not necessarily indicate the totality of your tax liability for the settlement payment you receive. Class Members will be responsible for the tax consequences of all payments they receive, for filing returns and reporting all income received to applicable state and federal taxing authorities, and for payment of any other applicable taxes due. The Parties cannot provide and will not provide any advice regarding tax obligations. You may want to seek tax advice from your own tax advisor as to any amounts you might be eligible to receive pursuant to the Settlement.

d. Attorneys' fees and costs for Class Counsel

The Court approved the following law firm and attorneys as Class Counsel:

HKM EMPLOYMENT ATTORNEYS LLP

Donald W. Heyrich, WSBA #28897

Erin S. Norgaard, WSBA #32789

Brian L. Dolman, WSBA #32365

600 Stewart Street, Suite 901

Seattle, Washington 98101

bdolman@hkm.com

You do not need to pay any portion of Class Counsel's attorneys' fees or costs yourself. All payments for attorneys' fees and costs will be paid from the Settlement Amount. Class Counsel will seek reimbursement of the costs they actually incurred in litigating this case, up to a maximum of \$10,000.00. Class Counsel will also request that the Court award attorneys' fees of up to 25% of the Settlement Amount, or up to \$1,000,000.00. Any amounts not approved by the Court will be added to the Net Settlement Fund for distribution to Participating Class Members.

e. Settlement Administration costs

The reasonable costs of administering the Settlement, including the Settlement Administrator's fees and expenses, up to \$20,000.00, will be paid out of the Settlement Amount. Any amounts not approved by the Court or otherwise not expended by the Settlement Administrator will be added to the Net Settlement Fund for distribution to Participating Class Members.

YOUR OPTIONS AND RIGHTS

6. What are my options?

a. Do nothing

If you want to participate in the Settlement, you do not have to do anything. You will receive your Settlement payment automatically if the Settlement is approved by the Court and becomes final. In exchange, you will be bound by the Settlement, including the Release of Claims.

b. Ask to be excluded

You can request to be excluded (or "opt out") from the Settlement. If you exclude yourself, you will not receive any payment from the Settlement, you will not be subject to the terms of the Settlement Agreement, and you will retain whatever rights and claims you may currently have.

If you want to exclude yourself from the Settlement, mail, email, or fax a written statement to the Settlement Administrator, whose name and contact information is provided below. The statement must contain (1) your

name, (2) your address, and (3) a statement that you desire to be excluded from the Settlement in the *Mendez v. Steelscape* matter, and (4) your signature. To be valid, an exclusion request sent by email must attach a PDF or other scanned image of an original signed document. An email alone will be insufficient. You cannot exclude yourself from the Settlement and also object to the Settlement. In order for you to object to the Settlement, or any term of it, you may not submit a request for exclusion.

Your request to be excluded must be postmarked or transmitted by **December 13, 2021**.

c. Object or comment

You may object to any term of the Settlement in writing before final approval by filing with the United States District Court for the Western District of Washington (in case number 3:19-cv-05691-TSZ) and serving upon counsel for the Parties, a written statement of objection. You cannot object if you exclude yourself from the Settlement. A written objection must contain (1) your name, (2) your address, and (3) the reason for your objection. If the Court rejects your objection, however, you will still be bound by the terms of the Settlement.

Your written objection or comment must be filed with the Court by **February 4, 2022**.

Your written objection must be served on Class Counsel, whose names and address are provided above, and on Steelscape's counsel, whose names and address are as follows:

K&L GATES LLP
Patrick M. Madden
Ryan D. Redekopp
925 Fourth Avenue, Suite 2900
Seattle, Washington 98104

Even if you do not submit a written objection or comment, you may still attend the final approval hearing to make an oral objection or comment.

<p>7. Released Claims – What will I give up if I participate in the Settlement?</p>
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If the Court approves the Settlement, the Court will enter a final judgment dismissing the lawsuit “with prejudice.” This means that the claims in the lawsuit will be permanently dismissed. Additionally, in exchange for the Settlement payments, Steelscape will be “released” from incentive compensation claims as described in Paragraph 4 of the Parties’ Settlement Agreement, which states:

Release by Settlement Class. As of the Effective Date, this Agreement constitutes a full and final settlement and release of any and all claims for or relating to additional, underpaid, or overpaid incentive compensation (whether characterized as bonuses, profit sharing, or otherwise), that were asserted or that, whether asserted or not, arise under the facts and circumstances alleged in the Amended Complaint by any and all members of the Settlement Class against Defendants or any other Released Parties based upon acts or omissions before the Opt-Out Deadline. This includes claims, rights, demands, charges, complaints, causes of action, damages, obligations, disputes, or liabilities arising under statutory (including under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, and RCW Chapters 49.12, 49.46, 49.48, and/or 49.52), contractual, quasi-contractual, equitable, or common law theories, including without limitation claims for any related wage payments, premiums, penalties, double or exemplary damages, taxes, interest,

attorneys' fees, costs, or expenses. This expressly excludes any claims that may not be lawfully released under this Agreement.

By being part of the Settlement, Participating Class Members agree that they cannot sue or seek recovery against Steelscape (or other Released Parties described in the Settlement Agreement, including, for example, Steelscape's past and present subsidiaries, parents, and other affiliated persons or entities, and their respective insurers, predecessors, successors, assigns, officers, directors, employees, agents, representatives, and attorneys (the "Released Parties")) for any released claims. Participating in the Settlement does not, however, waive claims outside the release. Any Class Member who does not request exclusion by the applicable deadline is a Participating Class Member and will be considered to have accepted the above "Class Release" and to have waived any and all of the released claims against the Released Parties. Any Class Member who requests exclusion by the applicable deadline is not a Participating Class Member and will not be subject to the Class Release.

8. Will I be subject to discipline based on whether I participate in the Settlement?

No. Steelscape fully supports the Settlement and will not retaliate in any way against any Class Member for participating in the Settlement. Indeed, Steelscape encourages all Class Members to participate in the Settlement. Your decision to participate, not participate, or object to the Settlement will not affect your employment with Steelscape or Steelscape's treatment of you as a current or former employee.

GETTING MORE INFORMATION

9. Where can I get additional information?

This Notice only summarizes the lawsuit, the Settlement, and related matters. For more information, please contact Class Counsel or the following Court-approved neutral third-party Settlement Administrator:

Mendez, et al. v. Steelscape Washington, LLC, et al.
c/o JND Legal Administration
PO Box 91226
Seattle, WA 98111
Email: MendezSteelscapeWAInfo@jndla.com
Fax: (206) 788-8766
Toll free telephone number: (844) 975-1785

PLEASE DO NOT TELEPHONE THE COURT OR CONTACT STEELSCAPE OR STEELSCAPE'S COUNSEL WITH QUESTIONS ABOUT THIS NOTICE, THE SETTLEMENT, OR THE PAYMENT PROCESS. Please also note that, as a term of the Settlement, Steelscape's executives, managers, and human resources personnel generally will not be able to answer Class Members' questions about this Settlement. These questions should be directed to the Settlement Administrator or to Class Counsel.

The pleadings and other records in this litigation, including the Settlement Agreement, may be obtained by contacting the Settlement Administrator. You may also inspect the Court files at the United States District Court for the Western District of Washington, 1717 Pacific Avenue (Union Station Building), Tacoma, Washington, during the hours of 8:30 a.m. to 4:30 p.m., Monday through Friday.